

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

WILNICK DORVAL,

Plaintiff,

v.

KAC 357 INC. d/b/a PLAZA EXTRA
SUPERMARKET and WALEED
HAMED,

Defendants.

Civ. No. 18-95

OPINION

THOMPSON, U.S.D.J.¹

INTRODUCTION

This matter comes before the Court upon the Rule 55 Motion Requesting the Clerk of the District Court to Enter Default Judgment filed by Plaintiff Wilnick Dorval (“Plaintiff”) against Defendants KAC 357 Inc. d/b/a Plaza Extra Supermarket and Waleed Hamed (collectively, “Defendants”). (ECF No. 13.) Defendants oppose the Motion. (ECF No. 21.) The Court has decided this Motion on the written submissions of the parties, pursuant to Rule 78(b) of the Federal Rules of Civil Procedure. For the reasons stated herein, the Motion is denied.

BACKGROUND

Plaintiff filed his Complaint on November 9, 2019 alleging racial discrimination and harassment by Defendants while Plaintiff shopped in their store. (ECF No. 1.) Defendants were served on January 10, 2019. (ECF No. 8.) On February 4, 2019, Defendants requested an

¹ The Honorable Anne E. Thompson, United States District Judge for the District of New Jersey, sitting by designation.

extension of time to file an answer, (ECF No. 10,) which the Court granted, allowing an extension until March 5, 2019 (ECF No. 11). On March 8, 2019, Defendants filed their Answer. (ECF No. 12.) The next day, Plaintiff filed the present Rule 55 Motion Requesting the Clerk of the District Court to Enter Default Judgment Against Defendants KAC 357 Inc. and Waleed Hamed (“Motion for Entry of Default Judgment”). (ECF No. 13.) Defendants oppose this Motion. (ECF No. 21.) Plaintiff’s Motion for Entry of Default Judgment is presently before the Court.

LEGAL STANDARD

Rule 55 of the Federal Rules of Civil Procedure governs both entry of default and default judgment. Rule 55(a) pertains to entry of default and provides, “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend . . . the clerk shall enter the party’s default.” Fed. R. Civ. P. 55(a). Rule 55(b) pertains to default judgment, providing the means by which a plaintiff may seek default judgment depending on the damages sought. Fed. R. Civ. P. 55(b)(1)–(2). Default judgment is thus a two-part process; “[p]rior to obtaining a default judgment under either Rule 55(b)(1) or Rule 55(b)(2), there must be an entry of default as provided by Rule 55(a).” *Nationwide Mut. Ins. Co. v. Starlight Ballroom Dance Club*, 175 F. App’x 519, 521, n.1 (3d Cir.2006) (citation omitted). Although Rule 55(a) refers to entry of default by the clerk, default may also be entered by the court. *Nesbeth v. Frazer*, 2008 WL 4279638, at *1 n.1 (D.V.I. Sept. 12, 2008); *see also Hoxworth v. Blinder, Robinson & Co., Inc.*, 980 F.2d 912, 917 n.11 (3d Cir. 1992)). The Third Circuit “does not favor entry of defaults or default judgments.” *U.S. v. \$55,518.05 in U.S. Currency*, 728 F.2d 192, 194 (3d Cir. 1984).

DISCUSSION

Plaintiff did not file an application with the Clerk of the Court for entry of default pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, and instead filed the present Motion before the Court requesting that the Clerk enter default judgment. (ECF No. 13.) Since Plaintiff has failed to follow the two-part process required for default judgment, the Motion is denied.

Even if the Court exercised its discretion to enter default in place of the Clerk of the Court, *see Nesbeth*, 2008 WL 4279638 at *1 n.1, entry of default would not be warranted here: Defendants were only three days late in filing their Answer, and the Answer was filed *prior to* the filing of the present Motion. Based on these facts, Defendants have not “failed to . . . defend” in this case, as required for an entry of default pursuant to Rule 55(a).

CONCLUSION

For the reasons stated herein, Plaintiff’s Motion for Entry of Default is denied. An appropriate Order will follow.

Date: November 20, 2019

/s/ Anne E. Thompson
ANNE E. THOMPSON, U.S.D.J.

